

ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: Wright Analyst: Gloria McConnell Bill Number: AB 1044

Related Bills: See Legislative History Telephone: 845-4336 Introduced Date: 02/25/99

Attorney: Janet Ballou Sponsor: _____

SUBJECT: FTB Collection of Student Aid Commission Outstanding Accounts Receivable

SUMMARY

Under this bill, before a delinquent student loan could be referred to Franchise Tax Board (FTB) for collection, the Student Aid Commission (commission) would be required to provide certain notices and hearings, including "actual" notice at the debtor's last known address, that generally would delay referral of outstanding student loans to FTB by 30 days.

Additionally, under this bill,

- FTB would be required expressly to provide notice to the debtor at the most recent address of record provided by the commission or last address known to the FTB. If the mail is returned as undeliverable or FTB otherwise knows the mail was misdirected, FTB would be required to use reasonable diligence to ascertain the current address of the debtor and provide notice at that address;
- Amounts collected would have to be returned if the debtor establishes by a preponderance of the evidence that FTB did not provide the debtor with the notice as required above;
- FTB would be required to wait at least 15 days (instead of the current 10 days) after it issues notice to the debtor containing certain prescribed information written in Spanish and English and requests payment before it can proceed with collection action;
- FTB would be limited to levying on 10% of a debtor's wages;
- FTB would be limited to levying on, in the aggregate, 25% of the amount in a debtor's bank account(s) unless the amount in the bank account(s) is in excess of \$2,000, in the aggregate, at the time of levy; and
- FTB would be required to adopt regulations to implement the provisions of this bill.

EFFECTIVE DATE

If the account is in FTB's inventory as of December 31, 1999, the provisions relating to pre-referral activities would not apply. However, to the extent this bill would change notices issued by Franchise Tax Board and the hearing process attributable to activities taken by Franchise Tax Board, the amendments made by this bill would apply to collection activities undertaken on or after January 1, 2000. Additionally, this bill would apply to all accounts referred to FTB after January 1, 2000.

Board Position:

<u> </u> S	<u> </u> NA	<u> </u> NP
<u> </u> SA	<u> </u> O	<u> </u> NAR
<u> </u> N	<u> </u> OUA	<u> X </u> PENDING

Department Director

Date

Gerald Goldberg

4/20/1999

LEGISLATIVE HISTORY

AB 255 (Stats. 96, Ch. 1001); AB 2004 (1998) (See Program History and Additional Comments below.)

PROGRAM HISTORY/BACKGROUND

Beginning January 1, 1997, through December 31, 2001, AB 255 requires the Student Aid Commission (commission) to contract with FTB to collect all or part of its outstanding accounts receivable (student loan delinquencies) as though they were delinquent personal income tax (PIT) liabilities, which includes using FTB's administrative levy authority. Before an account can be referred to FTB, the following requirements must be satisfied:

1. The amount must be due and payable,
2. Notice of the amount due and payable must have been sent to the last known address maintained by the commission,
3. The account must have first been referred to (and uncollected) by a private collection agency for at least nine months, and
4. In the case of disputes of the amount of a debt or the terms of the repayment schedule by the debtor, the debtor must have been provided an opportunity for an administrative hearing. Moreover, the debtor must not be a party to a judicial proceeding pending with respect to that debt.

The commission began referring accounts to FTB during July 1997. For the period beginning July 1, 1997, through December 31, 1998, FTB had an inventory of approximately 231,000 accounts and received approximately \$29 million in collections. The following reflects FTB's collection activities for that period:

FTB activity	# sent	# attached	payments received
Demands for payments	166,924	59,265	\$9,712,936
Bank levies	4,103	1,318	1,660,149
Wage levies	144,795	236,299	17,682,799

In preparing FTB's budget for the student loan collection program this fiscal year (1998/99), FTB staff underestimated the workload and associated budget needs, so did not seek sufficient spending authority. As a result of the inadequate spending authority, FTB has been unable to initiate new collection activities since October 1998; however, staff expects to resume new collection activities on new accounts before July 1999.

ADDITIONAL COMMENT

This bill is generally the same as AB 2004, as amended July 2, 1998. Several policy and implementation considerations were raised in FTB's analysis of that version of the bill. To resolve those policy/implementation considerations, the Senate Appropriations Committee took amendments in committee (August 20, 1998) and passed the bill. Governor Wilson subsequently returned the bill without signature stating he did not believe that the rights of severely delinquent loan debtors should be expanded beyond the rights of those who attempt to repay their debts. Additionally, it was stated that he believed that current law provides a

reasonable balance between the due process rights of students and the right of the state to collect repayment of delinquent loans.

SPECIFIC FINDINGS

To collect a delinquent student loan, **currently**, federal and California law prescribes that certain activities must have occurred and due process requirements must have been satisfied. Additionally, the commission may prescribe guidelines relative to the collection of delinquent student loans.

Currently, if full payment of a delinquent student loan would result in a hardship, FTB's notice instructs the debtor to contact the FTB, but if the amount of the debt is in dispute, the debtor is instructed to contact the commission. The following titled information on the back of the demand for payment is printed in both in English and Spanish: "General Information," "Your Defaulted Student Loan," and "If You Disagree with the Balance." These sections explain the availability of an Advocate if problems cannot be resolved with FTB and directs the debtor to contact the commission for disputes about the amount of debt. Additionally, staff anticipates its notices will be revised, as part of an annual process to include more information and instruction in Spanish.

Currently, FTB is authorized to administratively garnish wages to collect taxes through an order to withhold (levy). The levy is limited to 25% of the debtor wages. Under AB 255 (Stats. 96, Ch. 1001), FTB was given the authority to collect delinquent student loans as though they were taxes, which generally would include administratively levying on 25% of the debtor's wages. Federal law also provides for the administrative collection of delinquent student loans. If using the federal provisions, however, the amount of wages subject to levy is 10%. It is unclear whether FTB's California authority to levy on 25% of wages is preempted by the federal provisions to levy on 10% of wages. Therefore, FTB currently administratively limits its wage levies to 10%. Staff understands that Michigan is using its own state administrative levy authority and levying on 25% of the debtor's wages.

Additionally, under the federal administrative levy authority, if it is known that a debtor is involuntarily separated from employment, his or her wages cannot be levied upon until after 12 months of continuous reemployment. FTB currently administratively complies with this federal restriction for delinquent student loan collections. When a levy on wages is issued and FTB is made aware of the employment situation, the levy is released.

Under this bill, additional notice requirements must be met, including the commission's providing "actual notice" to the debtor and opportunity for a hearing at least 30 days prior to referral to FTB. Additionally, the debtors would be allowed a hearing to object to referral of their account to FTB for collection.

This bill would codify FTB's current practice of limiting levies on wages to 10% and not issuing a wage levy if FTB is aware the debtor has involuntarily separated from employment and he or she has not been reemployed continuously for 12 months. Additionally, it would codify FTB's plan to include more billing information or instruction in Spanish.

Currently, under FTB's administrative collection authority, it levies on 100% of the amount in a debtor's bank account, but in the event the debtor can show the levy creates a hardship, FTB releases the levy. In the event of a dispute, the Taxpayer Advocate for laws administered by FTB is available to the debtor.

Under this bill, the notices the commission and the FTB are required to send must include information regarding hardship claims. Additionally, in the event the debtor's (bank) account or accounts in the aggregate contain \$2,000 or less, FTB's levy would be limited to 25% in the aggregate of that amount.

Currently, once FTB receives an account from the commission, it sends a demand for payment to the address of record or last known address and instructs the debtor that payment must be made within 10 days to prevent collection actions by FTB. Under current practice, to make allowances for the debtor who may make payment on the 10th day, FTB actually allows at least 30 days before the next collection action may be taken. If a debtor enters into an installment agreement during that 30-day window, collection action is not taken. In no event other than an overpayment is FTB authorized to return to the debtor an amount it collects.

Under this bill, once FTB receives the account from the commission, the FTB must send notice of the amount due to the debtor and allow the debtor at least 15 days to make payment to FTB or enter into a reasonable and affordable installment agreement with the commission or FTB. The bill clarifies that the address of record is that provided by the commission and that the last known address is that known to FTB. If the notice is returned as undeliverable or FTB knows the notice is misdirected, FTB must use reasonable diligence to ascertain the current address and, if the address is ascertained, provide notice to the debtor at that address. If the debtor can establish by a preponderance of the evidence that the FTB did not provide the notice as required, all amounts collected by levy must be returned to the debtor.

Currently, FTB's student loan collection program sunsets January 1, 2002.

This bill would extend the program an additional year, to January 1, 2003.

Policy Considerations

- This bill would implement due process protections before debts may be referred to FTB that go beyond those already provided under both federal and California laws. Moreover, the bill: (1) potentially would limit the amount of wages subject to levy and specifically would limit the amount in bank accounts that would be subject to levy and (2) would require that the amounts collected by levy be returned to the debtor if FTB does not provide required notice.

Additionally, setting a limit on the amount subject to collection in a bank account would increase the work for the depository institutions to comply with FTB's levies for delinquent student loans. Currently, all FTB levies are handled in the same fashion. Only for delinquent student loans withholding orders would depository institutions have to check the balance of each account at the time of levy to determine the amount that may be withheld.

- To the extent the collection of delinquent student loans under this bill would differ from the collection of taxes, FTB's collection efficiencies may diminish.

Implementation Consideration

This bill requires that the commission, FTB and the Controller each issue regulations to implement the provisions of this bill. To prevent delay of the collection process, staff would have to adopt emergency regulations immediately upon enactment of the bill, followed by permanent regulations.

However, because this bill basically codifies the entire administrative process and provides a high degree of administrative detail, it appears that regulations are unnecessary. FTB staff suggests that on page 12, line 39, "shall" be replaced with "may" so current law can be continued giving each agency the discretion to adopt necessary regulations.

FISCAL IMPACT

Departmental Costs

This bill would not significantly increase departmental costs.

Tax Revenue Estimate

Based on the discussion below, the collection impact of this bill is as follows:

Estimated Collections Impact AB 1044		
For Referrals of		
Student Aid Commission's Outstanding Accounts Receivables		
Fiscal Year Impact		
(In Millions)		
1999-0	2000-1	2001-2
(\$3)	Minor Loss	Minor Loss

Minor Loss = Less than \$400,000

This analysis does not consider the possible changes in employment, personal income, or gross state product that could result from this bill.

Tax Revenue Discussion

The collection impact of this bill would depend on (1) the number of referrals and collection activities that would be delayed as a result of additional notices and hearings required by the commission prior to referral of delinquent accounts to FTB, and (2) the reduction in the amount of collections as a result of limiting FTB to levying on, in the aggregate, 25% of the amount in the debtor's bank account(s) unless the amount in the bank account(s) is in excess of \$2,000, in the aggregate, at the time of levy.

This estimate is based on the results of the current Student Loan Collection Program. It is estimated that this bill would delay account referrals to

FTB by approximately two months in the first year of implementation (1999-0), thereby reducing collections by an estimated \$2.5 million. For purposes of this analysis, staff estimated on average a two-month delay in the commission's referral of accounts to FTB because of the new 30-day notice required by the commission before an account may be referred to FTB (additionally, the commission may find it will need to hold the account for an additional time beyond the 30 days to allow for last-minute payments or telephone calls); additional inquiries relating to requests for and the holding of hearings; and implementation of other changes required by this bill.

In addition, actual collections are estimated to decrease by approximately \$350,000 in the first year and decrease annually thereafter, as a result of limitations placed on the amount of money that can be levied on bank accounts.

BOARD POSITION

Pending.